IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-1-2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Habeas Corpus Petition Nos.1022,2023,2024 and 1025 of 2006

Anjali ..Petitioner in H.C.P.No.1022/2006

Manjula ..Petitioner in H.C.P.No.1023/2006

Easwari ..Petitioner in H.C.P.No.1024/2006

Padmavathy ..Petitioner in H.C.P.No.1025/2006

..vs..

The Secretary to the Government
Prohibition and Excise Dept.,
Secretariat
Chennai 600 009

The Commissioner of Police
Greater Chennai
Egmore, Chennai 600 008 .. Respondents in H.C.P.Nos.1022, 1023, 1024 and 1025 of 2006

H.C.P.No.1022/2006 filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 16.9.2006 in Memo No.251/BDFGISSV/2006 against the petitioner's husband, Perumal S/o Karuppan aged about 33 years who is confined at Central Prison, Chennai and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

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H.C.P.No.1023/2006 filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 16.9.2006 in Memo No.249/BDFGISSV/2006 against the petitioner's husband, Vinayagam S/o Elumalai aged about 33 years who is confined at Central Prison, Chennai and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

H.C.P.No.1024/2006 filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 16.9.2006 in Memo No.252/BDFGISSV/2006 against the petitioner's husband, Banraj S/o Subramani aged about 33 years who is confined at Central Prison, Chennai and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

H.C.P.No.1025/2006 filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 16.9.2006 in Memo No.250/BDFGISSV/2006 against the petitioner's husband, Sathish S/o Elumalai aged about 23 years who is confined at Central Prison, Chennai and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

For petitioner in H.C.P.Nos.1022 1023, 1024 and 1025/2006 : Mr.Ezhil Caroline

For respondents in H.C.P.Nos.1022 1023, 1024 and 1025/2006 : Mr.M.Babu Muthu Meeran, Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard the learned counsel appearing for the parties.

2. The four H.C.P.Nos.1022/2006 to 1026 of 2006 filed on behalf of the four detenus were heard together and

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are being disposed of by this common order as the basic allegations are common.

3. The orders of preventive detention have been passed in respect of each detenu on 16.9.2006 under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). In the grounds of detention it is indicated that these two persons along with several others have committed a murder as a retaliation on 10.8.2006. On the basis of this allegation Crime No.707/2006 on the file of Periayamedu police station has been registered along with several others under Sections 147, 148, 341, 307, 302 and 506(2) I.P.C. Subsequently, the two detenus were in custody and remand orders have been passed from time to time. On the basis of such basic allegation, the detaining authority has come to the conclusion that the detenus thereafter,

> "... along with his associates committed brutal murder in the public road without allowing the law to take its own course, has taken law into his hands without respecting the judicial system which has sent wrong signals to all law abiding citizens and he has also acted in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. By committing the above described grave murder in the public in a busy residential cum business area, in the busy day time, at the centre of Chennai City, he has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.

4. The learned counsel for the petitioners has submitted that the grounds of detention did not indicate the alleged involvement of the detenus in any other crime except the crime alleged to have been committed in Crime No.707/2006. In other words, the orders of detention are passed only on a single incident indicated in the grounds of detention and there is no allegation of his alleged involvement in any other case on any earlier occasion. In the above background, the learned counsel for the petitioners invited our attention for the provisions contained in the Act. Section 2(f) of the Act defines `goonda' in the following terms.

> `(f)"goonda" means a person, who either by himself or as a member of or leader of a gang,

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habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act XIV of 1860).
'

Section 2(1)(a)(iii) is as follows:

`(iii)in the case of a goondas, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order;'

5. The learned counsel for the petitioners submitted that before passing the orders of detention under Section 3 (1), the detaining authority is required to be satisfied that the person to be detained is a `goonda' as defined under the Act. As per the definition clause itself, a person can be described as a `goonda' if he habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860. It is submitted by him that by no stretch of imagination a person who is alleged to have committed an offence for the first time can be described as a person who habitually commits, or attempts to commit or abets the commission of offences. The learned counsel for the petitioners therefore submitted that the orders of detention have been passed by the authority without application of mind regarding provisions of the Act and as such they have been passed mechanically and they have to be quashed.

6. In support of such contentions, the learned counsel for the petitioners places reliance upon the decision of the Supreme Court reported in JT 2006 SC 69. (R.KALAVATHI V. THE STATE OF TAMIL NADU AND ORS.) Such decision of the Supreme Court arose out of an appeal against an order passed by the Division Bench of this Court. There the person was detained by invoking the very same provision. There was no allegation that the detenu was allegedly involved in any other offence except the case on the basis of which the detention order was passed. In such background, the Supreme Court set aside the order of dismissal passed by the High Court and directed the release of such persons. The Supreme Court in course of discussion has observed as follows:

"10.A bare reading of the provision makes the position clear that in order to attract action in

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terms of Section 3(1) of the Act, the detenu must be one who is a "Goonda" as defined under Section 2(f) of the Act. Though in other preventive detention laws, even a single act which has the propensity of affecting even tempo of life and public tranquility would be sufficient for detention, being prejudicial to maintenance of public order. For the purpose of the Act the detenu has to be a "Goonda" as defined under Section 2(f) of the Act."

13.The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See: Ayub alias Pappukhan Nawabkhan Pathan v. S.N.Sinha).

14.From one single transaction though consisting of several acts, a habit cannot be attributed to a person.

15.Judged in the background of legal position delineated above the order of detention cannot be maintained because it only refers to one act. There is also no materials to justify the conclusion that the accused was habitually committing crime. There is no reference to any other crime. Therefore, the order of detention cannot be maintained. The High Court has not considered this aspect in the proper perspective. The order of detention in respect of the detenu which was passed by the Commissioner of Police, Chennai on 1.8.2005 is quashed. The order of the High Court is set aside. Detenu be released from detention forthwith unless required to be otherwise detained."

7. In our considered opinion, the ratio of the aforesaid decision is squarely applicable to the facts of the present case. In view of the definition clause and in view of the specific provision, it is obvious that a person cannot be detained as `Goonda' unless there is allegation of his involvement in more than one offences on different occasions.

8. The learned counsel for the State however

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submitted by referring to several decisions of the Supreme Court that an order of detention can be passed even on a single incident.

9. It is not necessary to refer to those decisions because those decisions were in response to other preventive detention laws where there was no such definition. As a matter of fact, this aspect has also been noticed by the Supreme Court in the decision reported in JT 2006 page 69 where in para 10 it was noticed as follows:

> "10....Though in other preventive detention laws, even a single act which has the propensity of affecting even tempo of life and public tranquility would be sufficient for detention, being prejudicial to maintenance of public order. For the purpose of the Act the detenu has to be a "Goonda" as defined under Section 2(f) of the Act."

10. The learned counsel for the State has placed reliance upon an unreported decision of this Court in H.C.P.Nos.457 to 461 of 2006 disposed of on 11.7.2006 wherein, the order of detention passed on the basis of single incident has been upheld on the ground that a single incident also can cause disturbance of public order. In view of the specific decision of the Supreme Court, it is obvious that the Division Bench decision dated 11.7.2006 cannot be followed. The decision of the Supreme Court was not brought to the notice of the Division Bench while the matter was decided. It is of course true in the said Division Bench decision reliance has been placed upon the earlier Division Bench decision of this Court reported in 1993 LAW WEEKLY CRIMINAL 113 (SUBBAIAH @ THIRUVOTIYUR SUBBAIYAH 2 MAHADEVAN VS. THE COMMISSIONER OF POLICE MADRAS CITY AND ANOTHER). However, on going through the earlier decision we find that in the earlier case, there was one adverse case and thereafter, one ground case and in the above context the Division Bench had upheld the order of detention. The earlier Division Bench decision is therefore clearly distinguishable on facts.

11. In connection with H.C.P.Nos.1023 and 1024/2006, the learned counsel for the State has also stated that in the grounds of detention there is reference to the fact that the two detenus involved in the said cases were habitual offenders and therefore they must be taken to be `goondas' within the meaning of the Act. In the grounds of detention it is indicated that the detenu "....is an

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history sheeted rowdy element." Unfortunately, however, along with the grounds of detention, no such "history" had been furnished to the detenus. If there were materials against these detenus that they were involved in any other case and were "history sheeters" obviously, the details relating to those cases should have been furnished to the detenus in order to enable them to make any effective representation. Merely reciting in the grounds of detention without furnishing necessary details cannot be accepted as sufficient to come to the conclusion that those two detenus were `goondas' within the meaning of the Act.

12. It is of course true that the background in which the offence was committed appears to be very serious and the alleged murder which took place in a busy day light is a case of retaliation. However, since the provisions of the Act is not applicable, we are constrained to quash such orders of detention under Act 14/82.

13. All the four Habeas Corpus Petition Nos.1022, 1023, 1024 and 1025/2006 are accordingly allowed. The impugned orders of detention are quashed. The detenus are directed to be set at liberty forthwith unless their presence is required in connection with any other case.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1.The Secretary to the Government
Prohibition and Excise Dept.,
Secretariat
Chennai 600 009

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2.The Commissioner of Police
Greater Chennai
Egmore, Chennai 600 008

3. THE SUPERINTENDENT
CENTRAL PRISON, CHENNAI

4. THE JOINT SECRETARY
TO GOVERNMENT
PUBLIC (LAW AND ORDER) FORT SAINT GEORGE
CHENNAI 9

5. THE PUBLIC PROSECUTOR
HIGH COURT
MADRAS

ssr(co)
nm(21.02.07)

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1024 and 1025/2006

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